



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR )  
AN ORDER AUTHORIZING COMCAST )  
BUSINESS COMMUNICATIONS, INC. TO )  
PROVIDE LOCAL EXCHANGE AND )  
INTEREXCHANGE TELECOMMUNI- )  
CATIONS SERVICES THROUGHOUT )  
NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE00100789

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated October 13, 2000, Comcast Telecommunications, Inc. filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange services throughout the State of New Jersey. On December 14, 2000, Petitioner notified the Board of its name change to Comcast Business Communications, Inc. (hereinafter, Petitioner or Comcast). In addition, Comcast included a completed staff questionnaire on October 13, 2000 and responded to Staff interrogatories by letters dated November 13, 2000 and December 14, 2000. According to the petition, Comcast was incorporated under the laws of the State of Pennsylvania on August 5, 1993. Petitioner's principal offices are located at 1500 Market Street, Philadelphia, Pennsylvania 19103. Petition at 3.

Petitioner submitted copies of its Articles of Incorporation, its Pennsylvania Certificate of Good Standing and its New Jersey Authority to Operate as a Foreign Corporation. Petition at 3, Exhibit B; December 14, 2000 Letter, Exhibit A. According to the petition, Comcast was formed to provide local exchange and interexchange services. Petition at 1. Petitioner advised that Comcast is currently certified to provide facilities-based local exchange and interexchange telecommunications services in Delaware, the District of Columbia, Indiana, Maryland, Michigan, New York, Pennsylvania and Virginia. December 14, 2000 Letter at 2. Comcast has not been denied authority to provide telecommunications services in any state. In addition, Comcast has no pending civil, criminal or administrative actions against it. Questionnaire Response at 3.

Comcast advised that it does not currently have any interconnection plans and therefore has not negotiated any interconnection agreements. Id. at 3.

In its petition, Comcast advised that it seeks authority to provide local exchange and interexchange telecommunications services to business customers throughout New Jersey. Comcast services may include, but will not necessarily be limited to: (1) local exchange services to both single and multi-line customers; (2) switched and dedicated interexchange services; and (3) dedicated and special carrier access services to other service providers. Comcast intends to initially use existing and upgraded cable facilities owned by its New Jersey cable affiliates and may in the future also purchase facilities from the incumbent local exchange company or other carriers. Petition at 5; December 14, 2000 Letter at 4.

Petitioner requested waivers of N.J.A.C. 14:1-1.2, 14:1-5.15, 14:1-4.3 and 14:10-1.16(b), which require that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested that, in the interest of efficiency and to prevent undue burden, it be permitted to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 7. Petitioner also requested permission to keep all books, records, documents and other writings incident to the conduct of its business in the State of New Jersey at Petitioner's corporate offices in Philadelphia, Pennsylvania. Id. at 6. Petitioner stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses incurred for examination of the records.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Id. at 7.

With regard to its technical and managerial qualifications, Comcast stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Id. at 4. Petitioner submitted the professional biographies of its key personnel who, according to Comcast, are well qualified to execute its business plan. Id. at 5, Exhibit C.

Petitioner has submitted its form 10-K reports for 1997, 1998 and 1999 as evidence of its financial ability and will be required to file two years pro forma balance sheets and income statements for its New Jersey operations prior to approval of its tariff.

By letter dated January 26, 2001, the Division of the Ratepayer Advocate (Advocate) filed comments on this petition. The Advocate recommended approval of the petition conditioned upon the imposition of certain safeguards to prevent cross-subsidization of Comcast's telecommunications customers by the cable customers of Comcast's cable affiliates, and to assure non-discriminatory treatment of Comcast's competitors by Comcast's parent. In addition, the Advocate recommended Board approval of the requests for waiver of Board regulations regarding the location of the petitioner's books and records and the accounting procedures under which those books must be kept.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Comcast's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and interexchange telecommunications services in New Jersey, subject to approval of its tariff and submission of its pro forma financial statements. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided. With respect to the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay the Board for any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board GRANTS Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

Since Petitioner, in response to Staff discovery, indicated its plan to use the facilities of its New Jersey cable television affiliates in the provision of facilities-based telecommunications services, but has not provided a lease agreement to indicate how it will pay for the use of such facilities, there is a potential for cross-subsidy. In order to guard against the potential that the cost of Petitioner's telecommunications venture be borne by cable rates, or when financing is used, involve the negative pledge of cable affiliate assets, the Board believes it appropriate that certain conditions be placed on the approval of Petitioner's operating authority. Moreover, these conditions address the Advocate's concerns regarding cross-subsidization. The Board also notes that non-discrimination requirements are set forth in the Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and will be enforced by the Board. Accordingly, the Board's approval of this petition is subject to the following conditions:

1. Use of the cable television network for telephony purposes by Comcast Business shall not lessen the obligations of Comcast's New Jersey cable affiliates to their subscribers or impair their ability to provide safe, adequate and proper service.
2. Comcast Corporation shall keep records of all construction, repair and maintenance costs associated with the use of its New Jersey cable subsidiaries facilities for telephony purposes.

3. Comcast Corporation and its New Jersey cable subsidiaries shall keep their books and records in a manner such that all costs, charges, interest income, accounting entries and associated matters, including construction, operating and maintenance costs, related to the use of cable facilities for telephony purposes can be readily obtained and/or determined.
4. In the event that Comcast Corporation or any of its New Jersey cable subsidiaries elect to file a cost-of-service case, the Board and its staff reserve the right to review all proposed cost allocations and adjust them to the extent necessary to eliminate any cross-subsidization. The Board further reserves its continuing jurisdiction and authority, pursuant to N.J.S.A. 48:5A-9 and 48:2-13 and all other applicable laws, to investigate and audit or inquire, or to require the submission of any data by Comcast Corporation and/or its subsidiaries or affiliates as the Board may deem necessary in the future to ensure that no cross-subsidization occurs between the telephony and cable operations.
5. Comcast Corporation and its New Jersey cable subsidiaries shall provide notice of use of cable facilities for telephony purposes, to each affected municipality, in order to provide information which the affected municipality may need in order to exercise any rights it may have under N.J.S.A. 48:5A-30(c) and N.J.S.A. 54:30A-124 with regard to petitions to the Board for additional franchise fees in connection with the use of rights-of-way. Such notice, the form of which is attached to this Order, shall be given to each municipality in which the cable facilities of Comcast's cable affiliates are to be used for the purpose of providing telecommunications services. Proof thereof shall be filed with the Board at least 60 days prior to the commencement of such telecommunications services.
6. Comcast Corporation or its New Jersey cable subsidiaries shall file sufficient information with the Board at least 90 days prior to the provision of any telecommunications service over its cable facilities to clearly demonstrate that there is no cross-subsidy arising from its potential use of these facilities. Such information shall be as complete as possible and shall include, but not be limited to: the number of fibers, fiber capacity and coaxial bandwidth used for cable service; the number of fibers, fiber capacity and coaxial bandwidth used for telephony services; a copy of the relevant portions of its books and records illustrating that all costs associated with the use of cable facilities for telephony and other non-traditional cable television purposes have been segregated from its cable costs. Where the use of joint facilities gives rise to common costs that cannot be directly assigned, but require the use of an allocation, an explanation of how the allocation was derived, together with all associated supporting materials, shall be provided.
7. Prior to the provision of and actual use by Comcast of cable television facilities owned, operated or controlled by Comcast's cable television affiliates, an appropriate petition, pursuant to N.J.S.A. 48:5A-40 and/or 41, must be filed in order to obtain the necessary Board approval prior to the use of such cable television facilities for the provision of Comcast's telecommunications services.

8. In the event that Comcast enters into an agreement with any other New Jersey cable operator other than its affiliate for the purpose of utilizing the cable operator's facilities for telecommunications purposes, the above conditions apply to any such agreement.

DATED: 2/15/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
HERBERT H. TATE  
PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
BOARD SECRETARY

ATTACHMENT

COMCAST MUNICIPAL NOTICE

Dear \_\_\_\_\_:

Comcast Business Communications, Inc., a subsidiary of Comcast Corporation, which provides cable television services through various cable television subsidiaries, has filed with the New Jersey Board of Public Utilities (the "Board") a petition for approval of a tariff that sets forth the terms and conditions under which it or Comcast Business Communications may provide competitive telephone services in New Jersey utilizing the facilities of its cable affiliates. In order to provide such services, Comcast Business Communications may use cable facilities in your community as well as traditional telephone lines.

The Board has, as part of the tariff approval process, asked Comcast Corporation to notify you that should Comcast Business Communications, Inc. provide telephone services at some point in the future using the cable facilities in your community, you may have certain rights under the New Jersey State Cable Act, N.J.S.A. 48:5A-30(c) and N.J.S.A. 54:30A-124.

This notice does not require any action on your part. If you have any questions regarding this matter, please do not hesitate to contact us.